APPENDIX.

11 U. S. C. A., Section 207, paragraphs (f) and (h).

Paragraph (f): " * * * Before or after a plan is confirmed, changes and modifications may be proposed therein by any party in interest and may be made with the approval of the judge after hearing upon notice to creditors and stockholders, subject to the right of any creditor or stockholder who shall previously have accepted the plan to withdraw his acceptance, within a period to be fixed by the judge and after such notice as the judge may direct, if, in the opinion of the judge, the change or modification will be materially adverse to the interest of such creditor or stockholder, and if any creditor or stockholder having such right of withdrawal shall not withdraw within such period, he shall be deemed to have accepted the plan as changed or modified; Provided, however, That the plan as changed or modified shall comply with the provisions of subdivision (b) of this section and shall have been or shall thereafter be accepted as required by the provisions of subdivision (e), clause (1), of this section, including acceptances by reason of failure to withdraw as hereinbefore provided, and the provisions of this subdivision (f), and of subdivision (e), clause (2), of this section, shall have been complied with in respect thereof. Upon confirmation of the plan by the judge, the debtor and other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to put into effect and carry out the plan and the orders of the judge relative thereto * * * ".

Paragraph (h): "Upon final confirmation of the plan, the debtor and other corporation or corporations organized or to be organized for the purpose of carrying out the plan, shall have full power and authority to, and shall put into effect and carry out the plan and the orders of the judge relative thereto, under and subject to the supervision and control of the judge, and the property dealt with by the plan, when transferred and conveyed by the trustee or trustees to the debtor or the other corporation or corporations provided for by the plan, or, if no trustee has been appointed, when retained by the debtor pursuant to the plan or transferred by it to the other corporation or corporations provided for by the plan, shall be free and clear of all claims of the debtor, its stockholders and creditors, except such as may consistently with the provisions of the plan be reserved in the order confirming the plan or directing such transfer and conveyance or retention, and the court may direct the trustee or trustees, or if there be no trustee, the debtor and any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties, to make any such transfer or conveyance, and may direct the debtor to join in any such transfer or conveyance made by the trustee or trustees. Upon the termination of the proceedings a final decree shall be entered discharging the trustee or trustees, if any, making such provisions as may be equitable, by way of injunction or otherwise, and closing the case * * * ".

REORGANIZATION PLAN.

This Agreement made and entered into this 20th day of December, 1934, by and between

George W. Rossetter,
Jay C. McCord, and
Sidney H. Kahn,

not personally, but as the Flanders Apartment Hotel First Mortgage Bondholders' Committee constituted under a deposit agreement dated March 6, 1931, party of the first part, (hereinafter referred to as the "Committee"), and

4145 Broadway Hotel Company, an Illinois corporation, party of the second part, (hereinafter referred to as the "Corporation"),

Witnesseth:

On September 15, 1923, Flanders Hotel Building Corporation, an Illinois corporation, issued its 6½% first mortgage bonds in the amount of $1,350,000.00 and to secure the payment of said bonds and the interest coupons pertaining thereto, executed its trust deed and chattel mortgage to Melvin L. Straus, as Trustee, dated September 15, 1923, conveying the property known as the "Flanders Hotel" located at the Southeast Corner of Broadway and Buena Avenue, Chicago, Illinois, together with the personal property located therein. Unsubordinated first mortgage bonds in the amount of $1,191,000.00 remain outstanding and unpaid. Defaults occurred in the payment of principal and interest on these bonds and S. W. Straus & Co. purchased bonds and coupons as they matured and subordinated them to the outstanding bonds and interest coupons. S. W. Straus & Co. acquired title to the property subject to the outstanding bond issue.

On May 18, 1931, by reason of further defaults, the Trustee declared all of the outstanding bonds due and payable and instituted foreclosure proceedings. On January 20, 1932, a final decree of foreclosure and sale was entered, but no sale of the property has been had. The Committee was organized on March 6, 1931 in order to protect the interests of the unsubordinated first mortgage bondholders and the Committee now has on deposit $1,143,800.00 or approximately 96% of the total outstanding issue.

On December 28, 1932, the Committee entered into an agreement with S. W. Straus & Co. wherein S. W. Straus & Co. agreed to convey title to a nominee of the Committee and to transfer to the Committee all of the subordinated bonds and interest coupons held by S. W. Straus & Co. in consideration of the sum of $5,000.00 to be paid by the Committee to S. W. Straus & Co. Such amount was to be paid, however, only after all delinquent taxes had been paid, a reserve had been created for the payment of all accrued taxes and all expenses in connection with the foreclosure and reorganization had been paid in full. At the date of the making of said agreement, the investment of S. W. Straus & Co. in said property amounted to the sum of approximately $260,900.00. No part of said sum of $5,000.00 has as yet been paid, but S. W. Straus & Co. caused title to be conveyed to a nominee of the Committee, who thereupon conveyed title to the property to the Corporation.

Since the date of the foreclosure proceedings the property has been under the management of Frank J. Hannahan who was appointed receiver in the foreclosure proceedings.

On August 10, 1934, Marian R. Abercrombie, Andrew L. Corbey and Rose Mary King, attorney in fact for

Amanda Koenig, filed their petition in the District Court of the United States, for the Northern District of Illinois, Eastern Division, Number 56875, asking for a reorganization under the provisions of Section 77B of the Bankruptcy Act, as amended. Said petitioning creditors have indicated their desire to cooperate with the Corporation and the Committee in the adoption and promulgation of a plan of reorganization.

Now, Therefore, in consideration of the premises and of the mutual covenants and agreements of the parties hereto, the parties hereto do hereby agree to the following plan of reorganization:

1—11,910 shares of the common stock of the Corporation shall be issued to three Trustees to be selected by the Committee. Trust certificates shall be issued to the holders of unsubordinated first mortgage bonds and each first mortgage bondholder shall receive a trust certificate representing one share of stock for each $100.00 in face amount of bonds owned by him. The stock so issued to the Trustees shall be the only outstanding stock of the Corporation so that the trust certificates issued to the holders of the unsubordinated first mortgage bonds will represent 100% of the outstanding stock of the Corporation.

2—The Corporation will execute a trust agreement with the three Trustees. The trust agreement shall endure for a period of ten years, subject to termination in the manner herein described. Not later than sixty days prior to the expiration of the first two-year period of said trust, the Trustees shall call a meeting of all trust certificate holders, or in lieu of such meeting, shall conduct a referendum of all trust certificate holders for the purpose of determining their wishes as to the termination of the trust. In the event that 51% or more in amount of

the trust certificate holders vote in favor of the termination of the trust, either at such meeting or through such referendum, then and in such case, the trust shall be dissolved as of the date of the end of the first two-year period and the stock of the Corporation shall be issued pro rata to the then holders of the trust certificates. If the holders of 51% or more in amount of the trust certificates do not vote in favor of the termination of the trust, then the trust shall be continued. If at the expiration of the first two-year period the trust is continued, as hereinabove provided, then a similar meeting or referendum shall be held prior to the end of the second two-year period to determine whether the trust shall be then terminated in the same manner as hereinabove provided at the end of the first two-year period. Similar meetings or referenda shall be held at the end of each two-year period to determine whether the trust shall be terminated at the end of such period unless the trust shall theretofore have been terminated by the certificate holders or by a majority of the Trustees, and in any event, the trust shall terminate at the expiration of ten years from the date of the original trust agreement. The Committee shall nominate three persons satisfactory to the court to serve as the original Trustees. The committee shall also nominate the Depositary. Any vacancy among the Trustees shall be filled by the remaining Trustees. The Trustees shall have the right at any time to remove the original Depositary or any successor Depositary and to appoint a successor Depositary. The trust agreement shall provide that any of the Trustees may be removed and a successor Trustee appointed at any time upon the written direction of a majority in amount of the holders of the outstanding trust certificates. The Trustees shall be entitled to receive usual and reasonable compensation for their services, but the annual compensation of the

Trustees in the aggregate shall not exceed 1% of the gross income of the Corporation. The Depositary shall be entitled to receive reasonable compensation for its services, which compensation shall not exceed the regular fiduciary charge for such services. The compensation and expenses of the Trustees and their Depositary shall be paid by the Corporation. The trust agreement shall be in form satisfactory to counsel for the Committee and for the petitioning creditors in the bankruptcy proceeding.

3—The trust agreement shall provide that the Trustees shall not vote the shares of stock held by them in favor of a resolution authorizing the sale or mortgage of the property unless written notice of the terms and provisions of the proposed sale or mortgage has been given to all certificate holders at least fifteen days before the date of the meeting of stockholders at which it is proposed to vote upon such proposed sale or mortgage, and the Trustees shall not vote in favor of any such proposed sale or mortgage if one-third or more in amount of the holders of the trust certificates dissent in writing from such proposed sale within fifteen days after the giving of such notice. The Trustees shall also have the power to sell the shares of stock held by them; but the trust agreement shall provide that the Trustees shall not sell the shares of stock held by them unless written notice of the terms and provisions of the proposed sale has been given to all certificate holders at least fifteen days before the date of the proposed sale, and the Trustees shall not sell such stock if one-third or more in amount of the holders of the trust certificates dissent in writing from such proposed sale within fifteen days after the giving of such notice. The Trustees shall have the right to apply to any court of competent jurisdiction for its approval before completing any sale or mortgage of the

property or before completing any sale of the stock held by them, but shall not be required so to do.

4—The Corporation shall by written agreement indemnify the Committee against any and all taxes, assessments or other governmental charges which may be levied or assessed against it and against any and all other liability which may be suffered or incurred by the Committee by virtue of the reorganization plan including expenses and attorneys' fees in the event that litigation is instituted against the Committee or any member thereof. The Corporation shall assume and agree to pay the reorganization expenses hereinafter referred to and these expenses shall be paid in full before any dividends shall be declared or paid upon the stock of the Corporation.

5—Subject to the approval of the court, the following reorganization expenses shall be allowed:

(a) To cover the general expenses of the Committee including the charge of Securities Service Corporation, 1% of the face amount of deposited bonds plus out of pocket expenses;

(b) Compensation of the Committee on the basis of ½ of 1% of the face amount of deposited bonds;

(c) Charge of the Depositary on the basis of ¾ of 1% of the face amount of deposited bonds, plus out-of-pocket expenses;

(d) Compensation of counsel for the Committee;

(e) Compensation of counsel for the petitioning creditors.

In addition, there shall be allowed the expenses and charges in the foreclosure proceeding, including the Trustee's fee, the fee of Trustee's counsel, court costs and Master's fees. There shall also be allowed and paid the actual expenses to be incurred in connection with the

organization of a new corporation, printing of the trust agreement and the new securities, stamp taxes, title guaranty expense, court costs in the bankruptcy proceeding and other similar items. The corporation shall also assume said contract with S. W. Straus & Co., which is now held by S. W. Assets Liquidation Corporation, but the moneys due under said contract shall not be payable until all of the foreclosure and reorganization expenses have been paid in full and provision has been made for all unpaid and accrued taxes.

6—The Committee will submit the plan of reorganization to all depositing first mortgage bondholders and also to all nondepositing first mortgage bondholders whose names and addresses are known to it, and the Committee will file claims on behalf of depositing first mortgage bondholders and will also file the necessary consents to the plan of reorganization on behalf of depositing first mortgage bondholders. The Committee will also cause the Corporation to file its consent in the bankruptcy proceedings to the foregoing plan of reorganization.

Unless all of the holders of the unsubordinated first mortgage bonds consent to and approve of the plan of reorganization, it is distinctly understood and agreed that the approval of the plan of reorganization by the first mortgage bondholders consenting thereto and/or the acceptance by said first mortgage bondholders of the new securities hereinabove provided for, are expressly conditional upon the entry of a valid order or decree confirming and approving the plan of reorganization, binding upon direct or collateral attack upon all of the persons who have any right, title, interest, lien or claim in or to the above mentioned property, whether or not such persons consented or adhered to said plan of reorganization

or whether or not they accepted any benefit thereunder. If for any reason the order or decree hereinabove referred to shall be reversed, set aside or held void or invalid, all of the first mortgage bondholders consenting to the plan of reorganization or taking any benefit thereunder shall be restored to their former right, title, lien or claim in and to said premises as if this plan of reorganization had never been in existence.

7—It is understood that in executing this agreement the Committee does so solely as a Committee and not as individuals and only pursuant to and in connection with the powers granted to the Committee by the terms of said deposit agreement subject to all the rights of depositing bondholders set forth in said deposit agreement. It is further understood that no individual member of said Committee shall be deemed personally bound by any covenant, undertaking or agreement herein, and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforced against the members of the Committee either individually or collectively by reason of any of the provisions hereof or by reason of any action or nonaction taken or permitted to be taken pursuant to the provisions hereof.

George W. Rossetter
Jay C. McCord
Sidney H. Kahn
Not personally but as the Flanders Apartment Hotel First Mortgage Bondholders' Committee.
4145 Broadway Hotel Company,
By Edward R. Heinsiemer,
President.

Attest:
M. C. Kuehn,
Secretary.

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62 120 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—56875) * *

Before:
Holly, J.
Monday, May 23, 1938. 10:00 o'clock A. M.
Court met pursuant to adjournment.
Present:
Mr. Nath,
Mr. Kinsey.

EXCERPT FROM PROCEEDINGS.

Mr. Kinsey: I say, far from being held in contempt, or far from having this restraining order continued, their own trust document says one of
121 the ways to remove the Trustees is to get sufficient—well, here it is:

"Any or all of the Trustees may be removed by the registered holders of participating certificates representing not less than a majority of the outstanding capital stock then held by the Trustees by an instrument in writing executed in triplicate by the requisite number of certificate holders, one copy of each such instrument to be delivered to the corporation, one to the Trustees, and one to the depositary of the Trustees."

They even provide that way of removing them. Then they go on further:

"Any action which the certificate holders are permitted to take hereunder may be taken by the certificate holders in person, or by attorney in fact."

Now, we were out for attorneys in fact, and, far
63 from what we are accused of, that we are not getting these for the purpose of litigation, we are not. We are trying to get a picture of this as to the other people who are being milked here. That is what we are trying to do.

122 Some of those letters I have seen, and they are very enlightening, your Honor, they are very enlightening, and they show that these people are

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heartily dissatisfied with the way the building is being handled.

That is our side of the story. Let us not have words put into our mouth by counsel, and have him telling us that our sole purposes here are that we are lame and we need more support for our litigation and therefore we are out trying, we are out finding people and trying to get their rights to act in their stead in this litigation. That is not the case at all. That is not the case at all. It is one of the methods that this Trust Agreement which they prepared, and with which they should be chargeable to the last letter, has for removing the Trustees.

The Court: They can not be removed at this time, can they?

Mr. Kinsey: Why can't they? The document provides these ways.

The Court: These Trustees are appointed for a specific length of time.

Mr. Nath: The Trust lasts for ten years, and there is a referendum every two years, but if the majority of holders of trust certificates wanted to remove
123 these trustees they could be removed at any time.

Mr. Kinsey: Yes; that is it. You bet.

Mr. Nath: The question your Honor should consider is whether or not the efforts to remove these Trustees should be based on this kind of a letter. I would be very much surprised if certificate holders were not dissatisfied after receiving that kind of communication.

The Court: So would I. Now to send this out at a time when this matter was pending I think is distinctly contempt of this court. You are making your charges here as though you had proved these things.

Mr. Kinsey: Your Honor we haven't even a petition in court yet. He is talking about us being in court here but we presented a petition and it was denied.

The Court: You are in court when you ask leave to file a petition, and you were in court when this letter of April 27th was sent out.

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64 Mr. Thomas: This was no reflection on the Court. It is two separate methods.

The Court: It is a reflection, it is an interference with the matter pending here.

Mr. Thomas: No, separate transactions, according to the trust agreement. It has nothing to do with
124 the other case pending at all.

The Court: Well, I do not want to enforce any penalty for contempt of court, and I probably would not if this sort of thing is not going to continue. But, if it is going to continue, then I will have to take appropriate action for what has been done, as well as ordering the stopping of it in the future.

If you are willing that the injunction should be entered and the letters shall not be sent out unless they are submitted,—no letters shall be sent out unless first submitted—I would not be inclined to punish for what has been done. But, unless you are, then I will have to.

Mr. Thomas: Well, those cestui que trusts who have already sent in their powers of attorney to me before any restraining order was issued, are being deprived of their rights.

The Court: I know, but we have litigation pending here, and there will be no further sending out of these, nor the use of the powers of attorney until we have heard from the Circuit Court of Appeals, until we have heard the Circuit Court of Appeals say whether I am right or wrong in denying leave to file the petition.

125 Mr. Thomas It just delays our rights under this other agreement; it has nothing to do with that.

The Court: I know.

Mr. Thomas: He hasn't even got one of those in court; he says they have, but it is not in court.

The Court: You have these two things pending.

Mr. Thomas: You are finding me in bad faith in listening to counsel representing both debtor and creditor in a bankruptcy case.

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The Court: Until the Circuit Court of Appeals says I am right or wrong in this,—if I am right in this, then it would be an entirely wrong thing to permit these communications of this sort to be sent out.

Mr. Thomas: Can't we appeal this restraining order?

Mr. Kinsey: Certainly.

65 The Court: If I am right about this the Circuit Court of Appeals will decide it very shortly. You don't need to take action until the Circuit Court of Appeals has passed on this.

Mr. Thomas: That stops us.

The Court: As I say now, I don't know, but if it is necessary I will have to impose a penalty for what has been done.

Mr. Kinsey: Oh, no, we are amenable to the
126 Court's wishes in the matter, and I speak for the client on that.

The Court: The order may be entered enjoining the sending out of any further communications until they are submitted to the Court. Then I would be inclined to overlook what has been done.

Mr. Kinsey: I also might suggest to the Court that we have a right to appeal this restraining order that you are imposing on us now.

The Court: If we are going to have that fought out, if this is contempt, perhaps we better have the whole thing fought out. If it is contemptuous then the penalty should be imposed. If it is not contemptuous, then the Circuit Court of Appeals will say it is not, and the penalty will be removed. But, if I am right in this thing there has been a contempt, a contempt of this Court has been committed. I was willing to waive it if you are willing while this appeal is pending, to forego sending out any other communications.

Mr. Thomas: May my counsel file a brief with you setting up some of these facts; may my counsel file a brief with you showing where it has not been in contempt?

127 The Court: I have the communication here. I do not need a brief on that question.

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Mr. Kinsey: The Court has that.

The Court: I have the communication here.

Mr. Kinsey: Certainly.

The Court: And I don't need a brief on that question.

Mr. Kinsey: I understand that.

The Court: It is just a question of whether you are willing to refrain until the Circuit Court of Appeals determines whether I am right. I may be wrong.

Mr. Kinsey: Yes, your Honor.

The Court: If the Circuit Court of Appeals says I am wrong it is different, a different story, entirely. Until that time I do not want any more communications sent out.

Mr. Kinsey: Yes; and I think we will regard that as being an order on us not to.

66 The Court: I want to know whether there is a consent to this order—

Mr. Kinsey: I do.

The Court: —restraining the sending out of any more communications until this—

Mr. Thomas: No objection to us coming back to you, if we change our minds, with a motion, is there?

The Court: That does not preclude you from
128 submitting any further communications you want to send out, it just precludes you from sending out any that have not been approved.

Mr. Thomas: A stockholder can talk to another stockholder, and have no intention of it being part of the other case, or anything to do with it,—of course, if we are forbidden to talk to other stockholders what chance have we?

The Court: What harm is going to come to you—

Mr. Thomas: Plenty; there is an emergency.

The Court: Wait until I finish.

Mr. Kinsey: Let the Court finish.

The Court: What harm is going to come to you until the Circuit Court of Appeals has passed on it?

Mr. Thomas: It is a question of my good faith.

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Counsel deliberately made misstatement after misstatement.

The Court: I say, what harm is going to come to you from—

Mr. Thomas: A lot of harm. I have had plenty of expense.

The Court: If you don't want to agree, if it can not be a consent order, we will proceed on the contempt matter.

Mr. Kinsey: Your Honor, let us look at it like this: Mr. Thomas, I think, is a little bit heated
129 up over this, because he thinks counsel here is using pretty slippery words on him, especially when counsel, the firm he represents, was attorney for the debtor, and he is attorney for the bondholders, and he is attorney for the trustee.

Mr. Nath: That is absolutely a misstatement that I was ever Attorney for—

Mr. Thomas: Well, your firm was.

Mr. Nath: My firm?

Mr. Thomas: Do you want me to prove it?

The Court: Just a moment. If you want to talk with your client I will defer action on this until, say, tomorrow morning, and as I say, if he is willing to a consent order being entered restraining him from sending any further communications until the appeal is disposed of in this matter—

67 Mr. Kinsey: If that is disposed of to our disadvantage, would there be anything stopping us then from soliciting bondholders, where one of them may move along that line, to have a vote on these Trustees?

The Court: I will determine that. All I am asking now is that he refrain from sending our communications while this is pending.

130 Mr. Kinsey: Yes.

Mr. Thomas: Unless I communicate with you.

Mr. Kinsey: I think you better.

The Court: Yes. Draw a consent order to that effect.

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Mr. Kinsey: Yes.

Mr. Nath: I will draft it and send it to counsel.

The Court: All right.

Mr. Nath: And send it over to your clerk.

Mr. Kinsey: Yes, I would like to have a copy of it.

Mr. Nath: Now, listen here, just a moment.

Mr. Thomas: Just a moment; I will show you.

Mr. Nath: That is in connection with the 77B proceeding where we represented the bondholders who already owned the stock.

Here is a sample of what we have to face: Counsel stated I represented the debtor, and therefore it was for that reason, and I am therefore representing all kinds of parties. He comes in with a photostatic copy of something showing we filed in this proceeding something on behalf of the—

Mr. Thomas: The answer of the debtor.

Mr. Nath: The debtor corporation. The an-
131 swer itself is filed by the 4145 Broadway Hotel Company, a corporation, and the only thing that there is, apparently, that makes him feel that this is our answer is the fact that it is our court back on the back of this, and counsel must know that at the time when this was filed the Bondholders Committee owned all the stock of the debtor corporation, and, therefore, in helping the debtor in any way whatsoever we were helping carry out this plan of reorganization.

Mr. Thomas: The stock was not in the name of any member of any Bondholders Committee at that time.

Mr. Nath: That is a sample of what we are faced with.

Mr. Thomas: Four months later they take a document on there and mark it there that somebody else received it,—in the court files.

The Court: Prepare a consent decree and I will forego the contempt. I don't want to impose any penalty unless I am compelled to.

(Adjourned.)

Motion of Petitioner touching transcripts of record.

Comes now your petitioner F. Gerald Thomas and moves this Honorable Court to excuse your petitioner from filing more copies of the transcript of record in CCA case numbers 6696 and 6733, consolidated, than the one certified copy herewith presented to the Clerk for filing.

And as grounds of this motion petitioner states, and the fact is, that no other copy of that transcript of record is to be had without reprinting the same; and in further explanation adopts as part hereof and refers the Court to the FOREWORD of petitioner's petition for certiorari, *supra* pages 1-3.

F. GERALD THOMAS,
Petitioner.

LLOYD C. WHITMAN,
Counsel for Petitioner.

State of Illinois,
County of Cook—ss.

F. Gerald Thomas, on oath says that the statements of fact in and in support of the foregoing motion and in petitioner's FOREWORD in his petition for certiorari under this same cover, pages 1-3 thereof, are true.

F. GERALD THOMAS,
Affiant.

Subscribed and sworn to before
me this 8th day of January, 1943.
CATHERINE DEE,
Notary Public.